REMARKS

Notice of Non-Compliant Amendment

The Examiner has not accepted the amendment as it was sent on January 23, 2007 because all of the claims were not listed. Particularly, claims 1-38 were cancelled but not listed. Applicant has updated the listing of claims to reflect all claims (1-56) and respectfully requests the Examiner to now consider the Amendment.

Claim Rejections – 35 U.S.C. § 103

The Examiner has rejected claims 39-41, 43, 45-47, 49, 51-53, and 55 under 35 U.S.C §103(a), as being unpatentable over Thro et. al. (U.S. Patent No. 6,037,991) ("Thro") in view of Applicant's admitted prior art. For the reasons set forth below, Applicant asserts that the cited references fail to teach, suggest, or render obvious Applicant's invention as claimed in claims 39-41, 43, 45-47, 49, 51-53, and 55.

Thro discloses a communication system that employs a method and apparatus for communicating video information. A first device receives video information from a video device and executes a computer program to determine the priority between transmission frame rate and resolution per frame. (Thro abstract) Thro discusses the priority between the frame rate and the resolution per frame. Specifically, Thro limits discussion of a bandwidth to a statement regarding the commonly known fact that "each communication resource, such as RF communication resources, is typically limited in bandwidth." (Thro, column 4, lines 7-8)

With respect to independent claim 39 in the presently claimed invention,

Applicant teaches and claims:

> "A method comprising, receiving in a driver program executed
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> by a computer a first request generated by an application program
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> executed by the computer for a frame rate and a second request
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> generated by the application program for a resolution, the first request
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> and the second request associated with communication between a
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> camera and the computer; and using the driver program *to evaluate a*
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> *bandwidth available for the communication between the camera and*
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> *the computer*, and comply with the first request *and based on the*
>
> *evaluation of the available bandwidth, selectively not comply with the*
>
> *second request*." (Claim 39) (Emphasis added)

Applicant asserts that Thro and Applicant's admitted prior art, each taken alone or

in combination, do not teach, suggest, or render obvious Applicant's invention at least

because there is no mention or discussion in Thro or Applicant's admitted prior art

regarding evaluating a bandwidth available for the communication between the camera

and the computer or based on the evaluation of the available bandwidth, selectively not

comply with the second request. The Examiner equates a single statement in Thro

explaining a definition of the term bandwidth (Thro column 4, lines 7-8) to Applicant's

evaluation of the bandwidth available. No place in the Examiner's referenced location in

Thro (column 4, lines 3-23) is there any reference regarding evaluating bandwidth.

Furthermore, the Examiner also utilizes a similar reference in Thro (column 4,

lines 3-36) to equate the invention in Thro with teaching Applicant's invention of "based

on the evaluation of the available bandwidth, selectively not comply with the second request." Again, Applicant submits that no where in Thro, column 4, lines 3-36 does Thro teach anything related to selectively not complying with a request based on an evaluation of the available bandwidth. Rather, Thro specifically teaches an embodiment of determining a device's priority automatically based on the movement of the mobile communication device. (Thro, column 4, lines 26-29) Thus, because Thro does not disclose evaluating an available bandwidth and determining a priority based on that evaluation, Thro does not teach Applicant's claimed limitations as emphasized above. Additionally, Applicant's admitted prior art also does not teach these claimed limitations.

Therefore, because Thro and Applicant's admitted prior art, each taken alone or in combination do not teach at least evaluating an available bandwidth and determining a priority based on that evaluation, Applicant respectfully submits that Thro and Applicant's admitted prior art do not teach, suggest, or render obvious Applicant's invention as claimed in pending claim 39.

In regard to independent claims 45 and 51, Applicant respectfully submits that Thro and Applicant's admitted prior art do not teach, suggest, or render obvious Applicant's invention at least for the same reasons as independent claim 1. Again, Thro and Applicant's admitted prior art do not teach at least evaluating an available bandwidth and determining a priority based on that evaluation. Thus, Applicant respectfully submits that Thro and Applicant's admitted prior art, each taken alone or in combination, do not teach, suggest, or render obvious not teach or anticipate claims 45 and 51 of the presently claimed invention.

Claims 40-41, 43, 46-47, 49, 52-53, and 55 depend from and further limit independent claims 39, 45, and 51, respectively. Thus, for at least the same reasons advanced above with respect to independent claim 39, Applicant respectfully submits that Thro and Applicant's admitted prior art, each taken alone or in combination, do not teach, suggest, or render obvious claims 40-41, 43, 46-47, 49, 52-53, and 55. Applicant respectfully requests withdrawal of the 35 U.S.C. 103(a) rejection of claims 40-41, 43, 46-47, 49, 52-53, and 55.

The Examiner has rejected claims 42, 48, and 54 under 35 U.S.C §103(a), as being unpatentable over Thro et. al. and Applicant's admitted prior art as applied to claims 39, 45, and 51 above, respectively, and further in view of Garofalakis et. al. (US Patent No. 6,330,609 B1) ("Garofalakis"). For the reasons set forth below, Applicant asserts that the cited references fails to teach, suggest, or render obvious Applicant's invention as claimed in claims 42, 48, and 54.

Garofalakis teaches a server system having a predetermined total bandwidth, providing data files to a plurality of clients in response to requests received from the clients, and a method for providing admission control by allocating a plurality of channel partitions to a plurality of channel groups such that each channel group includes one or more of the channel partitions. (Garofalakis abstract) Garofalakis does not teach at least evaluating an available bandwidth and determining a priority based on that evaluation.

Claims 42, 48, and 54 depend from and further limit independent claims 39, 45, and 51, respectively. Thus, for at least the same reasons advanced above with respect to independent claim 39, Applicant respectfully submits that Thro, Applicant's admitted prior art, and Garofalakis, each taken alone or in combination, do not teach, suggest, or

render obvious claims 42, 48, and 54. Applicant respectfully requests withdrawal of the 35 U.S.C. 103(a) rejection of claims 42, 48, and 54.

The Examiner has rejected claims 44, 50, and 56 under 35 U.S.C §103(a), as being unpatentable over Thro et. al. and Applicant's admitted prior art as applied to claims 39, 45, and 51 above, respectively, and further in view of Masamine et. al. (JP; 10-070641) ("Masamine"). For the reasons set forth below, Applicant asserts that the cited references fails to teach, suggest, or render obvious Applicant's invention as claimed in claims 44, 50, and 56.

Masamine teaches an image transmission system and method that send an image with a resolution and a transmission speed in matching with a display capability of an image receiver. (Masamine abstract) Masamine does not teach at least evaluating an available bandwidth and determining a priority based on that evaluation.

Claims 44, 50, and 56 depend from and further limit independent claims 39, 45, and 51, respectively. Thus, for at least the same reasons advanced above with respect to independent claim 39, Applicant respectfully submits that Thro, Applicant's admitted prior art, and Masamine, each taken alone or in combination, do not teach, suggest, or render obvious claims 44, 50, and 56. Applicant respectfully requests withdrawal of the 35 U.S.C. 103(a) rejection of claims 44, 50, and 56.

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CONCLUSION

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Applicant respectfully submits that all rejections have been overcome and that all

pending claims are in condition for allowance.

If there are any additional charges, please charge them to our Deposit Account

Number 50-0221. If a telephone conference would facilitate the prosecution of this

application, the Examiner is invited to contact Derek J. Reynolds at (916) 356-5374.

Respectfully Submitted,

Date: March 6, 2007   /Derek J. Reynolds/
                              Derek J. Reynolds
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